

**VERMONT ATTORNEY GENERAL'S OFFICE**

**CONSUMER FRAUD RULE (CF) 111**

**LIQUEFIED PETROLEUM "PROPANE" GAS**

- CF 111.01 Prohibited Acts**
- CF 111.02 Definitions**
- CF 111.03 Disconnection of Service**
- CF 111.04 Privacy of Notices**
- CF 111.05 Notice of Intent to Disconnect**
- CF 111.06 Time and Notice of Disconnection**
- CF 111.07 Heating Season Disconnections**
- CF 111.08 Notice Under a Repayment Plan**
- CF 111.09 Restoration of Service**
- CF 111.10 Minimum Delivery**
- CF 111.11 Cash Sales**
- CF 111.12 Security Deposits**
- CF 111.13 Delivery Fees**
- CF 111.14 Third-Party Payments**
- CF 111.15 Third-Party Credit Disclosures**
- CF 111.16 Credit Practices**
- CF 111.17 Discrimination**
- CF 111.18 Tank Removal and Refunds**
- CF 111.19 Disclosure of Prices and Charges**
- CF 111.20 Prohibited Charges**
- CF 111.21 Effect of Safety Laws**

CF 111.01. Prohibited Acts.

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. § 2453(a) for a retail distributor of liquefied petroleum "propane" gas to violate this rule.

CF 111.02. Definitions.

For the purpose of this rule:

(a) "Business days" means Monday through Thursday (or Friday if the company regularly conducts business on Saturday), excluding legal holidays and any other time, or the day before such time, when the company's business offices are not open to the public.

(b) "Charge" means any amount charged or billed by a gas company to a consumer, including, but not limited to, any hourly or flat-fee charge, other than for the cost of fuel or fuel taxes.

(c) “Company” or “gas company” means a retail distributor of gas used to cook, to heat hot water, or where used as the primary source of heat for the interior of a dwelling house or other structure owned, rented, or used by one or more individuals as a principal place of residence.

(d) “Consumer” means any person who purchases or otherwise agrees to pay consideration for gas for residential use and not for resale.

(e) “Delinquency” means failure of the consumer to make payments in full for a valid bill within 20 days of the postmark date of that bill, or by a due date at least 20 days after mailing or delivery of the bill, which date shall be written on the bill and which shall control in the absence of a postmark.

(f) “Disconnection” or “disconnect” means a deliberate refusal to deliver gas, or an interruption or disconnection of service, by a gas company to a consumer previously receiving service from the company.

(g) “Gas” means liquefied petroleum (propane) gas.

(h) “Heating season” means the time period from November 1st until April 15th of each year.

(i) “Notice,” except where otherwise provided, means written notice according to the requirements of CF 111.05, mailed or delivered within 40 days after delinquency, and mailed or delivered not more than 30 days, nor less than 14 days, prior to the disconnection of service.

(j) “Occupant” means a resident of a dwelling, authorized as such by the property owner or tenant, who is an end user of the gas provided by a company for any of the purposes set forth in subsection (c) of this section.

(k) “Payment of a bill” means receipt at the company’s business office or authorized payment agency of cash, governmental voucher, check, money order, or its equivalent which is subsequently honored upon presentment.

(l) “Physician’s certificate” means a written statement by a duly licensed medical or osteopathic physician certifying that an occupant of a dwelling unit would suffer a specified immediate and serious health hazard during the heating season by the disconnection of a gas company’s service to that dwelling unit or to the premises where the dwelling unit is located. The certificate shall be considered valid and in force for 30 days or the specified duration of the hazard.

(m) “Standard contractual terms” means the terms that a gas company customarily includes in its consumer contracts, *provided that* such terms may not conflict with this rule (for example, by refusing service to a consumer who is entitled to purchase gas on a cash basis under CF 111.11, based on the consumer’s creditworthiness).

CF 111.03. Disconnection of Service.

(a) No gas company shall disconnect gas service without the consent of the consumer unless there is a delinquency and notice of disconnection has been mailed or delivered to the consumer at least 14 days, but not more than 30 days, prior to disconnection.

(b) A company shall not disconnect if:

(1) The consumer or occupant uses gas as a primary source of heat and the amount of the delinquency is not more than \$60.00 and is fewer than 60 days past due; or

(2) The disconnection would present an immediate and serious hazard to the health of an occupant of the dwelling, as set forth in a physician's certificate furnished to the company during the heating season. Notice by telephone or otherwise that such certificate will be forthcoming shall have the effect of receipt, providing that the certificate is in fact received within seven days; or

(3) The only delinquency is more than two years old; or

(4) The consumer has not been given an opportunity to enter into a reasonable repayment plan to pay the delinquency or, having made such plan, has abided by its terms.

(i) A reasonable repayment plan shall consider, but not be limited to, the amount of the delinquency, the consumer's ability to pay, and the reason the account became delinquent.

(c) This section shall not apply to any disconnection made necessary for reasons of the immediate health or safety of the consumer or the general public.

CF 111.04. Privacy of Notices.

A company that is required by this rule to provide a written notice, invoice or statement to a consumer or occupant, where the document will be provided at a location where one could reasonably expect unrelated persons to be present (such as the hallway of an apartment building), shall place the document in an envelope or similar packaging, so as to protect the privacy of the communication.

CF 111.05. Form of Notice of Intent to Disconnect.

The disconnection notice required under CF 111.03 shall be clearly printed and shall contain all of the following information:

(a) A statement that the consumer's account is delinquent, a statement of the amount of the delinquency, and a statement that service will be disconnected unless:

(1) The delinquency is paid in full by a certain date; or

(2) The consumer enters into a reasonable repayment plan with the company to pay the delinquency; or

(3) The consumer presents to the company (or gives actual notice that he or she will, within seven days, present to the company) a physician's certificate;

(b) The dates and times of day when the company may disconnect service if the consumer does not take appropriate action as described above;

(c) The name(s) or title(s), address(es), telephone number(s) and business hours of the company representatives with whom the consumer may make any inquiry or complaint or arrange a repayment plan;

(d) The itemized cost that may be charged to the consumer for disconnection, collection and later restoration of service, and, if a deposit may be required for restoration of service, an explanation of how the amount of the deposit will be calculated;

(e) If disconnection is to occur during the heating season, a list, as annually compiled by the Department of Public Service, of the names, addresses and telephone numbers of governmental and private agencies that may provide assistance to consumers in paying their gas bills; and

(f) Any other information not inconsistent with these regulations.

CF 111.06. Time and Notice of Disconnection.

(a) Disconnection of gas service shall occur only between the hours of 7:30 A.M. and 2:00 P.M. of the business days specified on the notice of disconnection; *provided that* if a company has available personnel authorized to reconnect service and enter into repayment plans on behalf of the company until 8:00 P.M. of a normal business day, the company may disconnect service between the hours of 7:30 A.M. and 5:00 P.M.

(b) When service is disconnected, the individual making the disconnection shall immediately inform an adult occupant in each dwelling unit affected by the disconnection that gas service has been disconnected. If no adult occupant is present in any such dwelling unit, the individual shall leave on the premises, in a conspicuous and secure place as close as possible to the access to the dwelling unit, a notification advising that gas service has been disconnected and what the occupant has to do to have service restored.

CF 111.07. Heating Season Disconnections.

No gas company may disconnect service to any residential consumer who uses gas as the primary source of heat during the heating season, unless, in addition to complying with all other requirements of this rule, the company has complied with the following:

(a) The company shall make reasonable attempts to give the consumer actual oral notice of the information required to be in the disconnection notice under CF 111.04. If actual oral notice has not been given in any other manner, reasonable attempts shall consist of two telephone calls made to the consumer at his or her residence. One of the telephone calls shall be made between the hours of 6:00 P.M. and 9:00 P.M. on a business day if the consumer has not been reached during the day;

(b) If a consumer cannot be contacted by telephone, a personal visit shall be made to the consumer's residence and oral notice given at that time. If no adult occupant is home, notice containing the information required by CF 111.04 shall be left in a secure and conspicuous place; and

(c) If a dwelling affected by the proposed disconnection is not the consumer's residence, the notice required by this section shall also be delivered orally, or in person, to an adult occupant in each dwelling unit, with information on what the occupant has to do to have service restored. If no adult occupant is home, notice containing this information shall be left in a secure and conspicuous place.

CF 111.08. Notice Under a Repayment Plan.

(a) If a consumer fails to abide by the terms of a reasonable repayment plan, and the gas company has already complied with CF 111.06 and 111.07, the company may disconnect, but only if a notice is mailed or delivered to the consumer in compliance with the following:

(1) The notice shall contain:

(i) A statement that the consumer's account is delinquent, a statement of the amount of the delinquency, and a statement that service will be disconnected unless the delinquency is paid in full by a certain date; and

(ii) The dates and times of day when the company may disconnect service if the consumer does not take appropriate action as described above; and

(2) If the notice is delivered in person to the consumer, delivery shall be effected at least 72 hours prior to disconnection; or

(3) If the notice is mailed, it shall be deposited in a United States post office at least five business days prior to disconnection.

(b) The manner of the notice provided for in subsection (a) shall be sufficient *provided that* the company has given oral notice of the information required by CF 111.04 at the time the repayment plan was entered into and provided the terms of the repayment plan were reasonable.

(c) A copy of the disconnection notice required by this section shall also be delivered to an adult occupant of any other dwelling unit affected by the disconnection. If no adult occupant is present in any such dwelling unit, the notice required by this section shall be left in a secure and conspicuous place as close as possible to the access to the dwelling unit, with information on what the occupant can do to have service restored.

#### CF 111.09. Restoration of Service.

(a) If service has been disconnected, the company shall, within 24 hours, restore service upon the consumer's request when the cause for disconnection of service has been removed or when an agreement has been reached between the consumer and the company regarding the dispute that led to the disconnection.

(b) If the dwelling that is the subject of the disconnection is not the consumer's residence, the company shall make reasonable efforts to promptly reestablish service to the dwelling units affected by the disconnection, at the request of their respective adult occupants, subject to the company's standard contractual terms, *provided that* the company may also apply up to 25 percent of any cash payment toward standard charges that are due to establish service. Nothing in this rule shall require a gas company to restore service to an occupant who is not a consumer where the owner of the premises independently either objects to providing service or requests that the company's equipment be removed from the premises.

(c) Restoration of service, to the extent feasible, shall be done so as to avoid charging consumers for overtime wages or other extraordinary expenses.

#### CF 111.10. Minimum Delivery.

(a) A gas company shall not require a consumer to make a minimum purchase of more than 100 gallons at a time or more than the total capacity of the consumer's existing tank, whichever is less. This applies to all deliveries, including the initial installation.

(b) If a consumer uses a tank larger than 100 gallons, the following minimum deliveries shall be allowed, but only if the gas company offers and allows the consumer to enter into a reasonable payment plan or reasonable yearly budget plan:

250 gallon tank—125 gallon minimum  
325 gallon tank—175 gallon minimum  
500 gallon tank—225 gallon minimum  
1,000 gallon tank—300 gallon minimum.

(c) If a consumer is on a meter connected to a bulk tank, the minimum delivery amount shall be no more than the best estimate of the amount of fuel used in that dwelling in the corresponding month of a recent year, or the best estimate of usage if previous usage cannot be determined.

CF 111.11. Cash Sales.

(a) A gas company shall not fail or refuse to sell gas to a consumer in its geographic service area to whom the company has delivered gas, or from whom the company has accepted payment, within the previous eight months if such consumer is ready, willing and able to pay the lawful price upon delivery in cash, certified or cashier's check, or commercial money order or their equivalent, or a governmental or private agency has agreed unconditionally to pay for a delivery. In such circumstances, the company may require the consumer to comply with its standard contractual terms, except that if such a consumer owes the company money for charges or past gas deliveries, the company may not deny service, but it may apply the cash payment as follows: 75 percent toward the current gas delivery, and 25 percent toward the amount owed for charges or past gas deliveries.

(b) If a company has not delivered gas to, or accepted payment from, a consumer within the previous eight months, the company may require the consumer to comply with its standard contractual terms, including repayment of any outstanding balance due.

(c) Subsections (a) and (b) apply to a consumer on a meter connected to a bulk tank, to whom gas may be provided via a temporary tank.

CF 111.12. Security Deposits.

(a) Security deposits may only be required for consumers to whom a gas company agrees to extend credit.

(b) A gas company shall not require a security deposit in excess of two-twelfths (2/12) of the consumer's estimated annual bill.

(c) A gas company shall accept a reasonable payment plan for security deposits.

(d) A gas company shall refund a consumer's security deposit with accrued interest less accrued charges within 14 days of disconnection or termination of service.

CF 111.13. Delivery Charges.

(a) A gas company shall not require a delivery charge, except when the consumer requests that delivery be made outside of normal business hours or outside of a normally scheduled delivery to the consumer's geographic area. In such case, a reasonable charge may be collected if such delivery is required due to something other than the fault of the company.

(b) A gas company shall make reasonable efforts to avoid consumers' having to incur special delivery charges, including providing timely oral or written information on options for delivery and their costs.

(c) A gas company shall not require a delivery charge if the company fails to make an automatic delivery through no fault of the consumer and the consumer runs out of fuel as a result.

CF 111.14. Third-Party Payments.

When a gas company contracts with a governmental or private agency to make a delivery to a consumer, it shall deliver the full amount of the fuel paid for by the agency and shall not require any minimum delivery or security deposit.

CF 111.15. Third-Party Credit Disclosures.

A gas company shall not disseminate the names of past or present delinquent consumers to competing gas companies or solicit or use the names of competing companies' past or present delinquent consumers, except in the course of a routine credit check performed when a prospective consumer applies for credit privileges.

CF 111.16. Credit Practices.

(a) A gas company may deny a credit application, or change the terms of a consumer's credit arrangement, only if the company:

(1) Notifies the consumer in writing of the nature of, reasons for, and consequences of, the denial or change (including the impact on gas delivery and/or assessment of charges), which notification, in the case of a denial of a credit application, shall be mailed or delivered within 10 days of the date of the denial, or within 10 days of the date the company receives a report from a credit bureau on which it is basing the denial; and

(2) Affords the consumer an opportunity to provide a written or oral response to the denial or change within 15 days of the date the company mails or delivers its notice, to which the company must mail or deliver a reply within 10 days of receipt of the consumer's response, setting forth the reasons for any continued denial or change.

(b) Changes to credit status shall become effective no sooner than 15 days from the date of the notice of change issued to the consumer, or upon satisfaction of the requirements in subsections (a)(1) and (2) of this section, whichever is later.

(c) Nothing in this section shall prohibit a company from transacting a cash sale gas delivery with an applicant for credit during the time periods set out in subsections (a) and (b) of this section using the method of payment and payment allocation authorized in CF 111.10.



(d) No more than 30 days following a fuel delivery or service, unless payment has already been received, a company shall mail or deliver to the consumer an invoice or statement clearly and conspicuously itemizing the amount of gas delivered, the per-gallon price of the gas, the total amount due (including any charges), and the date payment is due. If the company delivers the invoice or statement other than by handing it directly to the consumer, it shall place the document in a secure and conspicuous location on the consumer's premises.

(e) No company shall bill or collect from anyone other than the consumer any amount for goods or services provided to the consumer, except that the company may bill or collect from a governmental or private agency or other person that has voluntarily agreed to make such payment.

CF 111.17. Discrimination.

A gas company shall not discriminate in the provision of gas service to any person based on race, creed, color, religion, national origin, sex, ancestry, place of birth, age, physical or mental handicap, marital status, sexual orientation, gender identity, or being a recipient of public assistance.

CF 111.18. Tank Removals and Refunds.

When a gas company disconnects or terminates service to a consumer, it shall:

(a) At the consumer's request, remove any storage tank that it owns from the consumer's premises by the latest of the following dates:

(1) 20 days from the disconnection or termination (30 days in the case of an underground tank);

(2) 20 days from the consumer's request (30 days in the case of an underground tank);

(3) In the case of a cash customer, 20 days from receipt of payment of all amounts due from the consumer; or

(4) As soon as the weather and access to the tank allow.

(b) Reimburse to the consumer, within 20 days of the disconnection or termination, the retail price paid for any gas remaining in the tank, or, if the amount of gas remaining in the tank cannot be determined with certainty, reimburse to the consumer 80 percent of the company's best reasonable estimate of said amount less any amounts due from the consumer. The company shall refund the remainder of the amount due as soon as the quantity of gas left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank; and

(c) Cooperate reasonably with the consumer's new company in the event of a tank exchange, taking into account such factors as tank ownership, access, value, gas remaining in the tank, condition, safety and liability.

CF 111.19. Disclosure of Prices and Charges.

(a) Upon the request of an individual, a gas company shall promptly disclose, over the telephone or in writing, the price or prices of its gas and the charges that are applicable to the consumer based on stated usage and other pertinent information.

(b) A gas company shall provide to all consumers who become its customers after the effective date of this rule, and to any prospective customer upon request, a list of its charges, the current dollar amount of those charges, and how long the charges will remain in effect, on a form prescribed by the Attorney General's Office after consultation with representatives of the gas industry. Any charge for which an amount is not specified on the disclosure required by this subsection shall not be billed or collected for one year from the date of the disclosure, except for charges relating to termination of service, which shall not be billed or collected for three years from the date of the disclosure. Any charge for which a duration is not specified on the disclosure required by this subsection shall not be billed or collected for one year from the date of the disclosure, except for charges relating to termination of service, which shall not be billed or collected for three years from the date of the disclosure.

CF 111.20. Prohibited Charges.

(a) A gas company shall not bill or collect:

(1) From a consumer who becomes its customer after the effective date of this rule any charge that is inconsistent in type, amount, or duration, with the disclosure provided to the consumer under CF 111.19(b); or

(2) From any other consumer, any charge that is not clearly and conspicuously set forth in a written contract in existence as of the effective date of this rule, or in the absence of such a contract, any charge that has not been disclosed clearly and conspicuously in writing to the consumer at least 60 days prior to the charge, *provided that* if, in the absence of an existing contract term, an existing customer requests that the company provide a service relating to installation, inspection or repair sooner than 60 days from the date of the request, the company may bill and collect its standard charge as long as it gives written or oral notice of the charge prior to providing the service.

(b) A gas company shall not separately bill or collect from a consumer any "governmental," "regulatory," "environmental," or other similar charge, nor shall a company misrepresent the nature of any charge included in the price of gas, *provided that* this section does not limit the per-gallon price charged by gas companies, nor prohibit their separately billing or collecting any tax.

(c) A gas company shall not bill or collect from a consumer any unreasonable charges to remove a storage tank from the consumer's property, or any unreasonable charges in connection with the consumer's switch to another company.

(d) If, through no fault of a consumer or other person authorized to be on the premises, equipment owned by a company malfunctions, the company shall not bill or collect from the consumer any amounts for the repair of that equipment or for any special trip related to the repair.

(e) A gas company shall not bill or collect from a consumer a tank rental fee for any period of time after the service has been disconnected or terminated.

CF 111.21. Effect of Safety Laws.

Nothing in this rule shall supersede any state law, rule or code designed to protect consumer or public safety with respect to liquefied petroleum (propane) gas. In the event of a conflict with this rule, any such law, rule or code shall take precedence to the extent of the conflict.